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City
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URBAN/MUNICIPAL

[Bylaws & legislation
affecting Hamilton
Board of Control

MAY 07 1981

To Provide for a Board of Control
GOVERNMENT DOCUMENTS

Whereas, it is provided by The Consolidated Municipal Act, 1903, as amended by Statutes of Ontario, 9, Edward VII., that the Council of any city having a population of less than 100,000, but more than 45,000, may by by-law provide that the Municipal Council of the city shall thereafter consist of a mayor and four controllers to be elected by the city at large, and the aldermen to be elected from the wards of the city under Section 70 of the said Act, and the four controllers so elected, together with the mayor, shall be the Board of Control for the said city; and it is further provided that no such by-law shall be passed until it shall have been submitted to the electors and shall have received the assent of a majority of the electors voting thereon.

Therefore, the Council of the Corporation of the City of Hamilton enacts as follows:

1. The Council of the City of Hamilton shall hereafter consist of a Mayor and four Controllers, to be elected by the City at large, according to the provisions of the Municipal Act, which may from time to time be in force authorizing the election of a Board of Control, and the Aldermen to be elected from the wards of the City, under Section 70 of the Municipal Act, and the four Controllers so elected, together with the Mayor, shall be the Board of Control for the said City.
2. The Council may, by by-law, fix the salaries to be paid to the members of the Board of Control, but the same shall not exceed for each member the sum of \$1,500 per annum.
3. The votes of the electors of this municipality shall be taken on this by-law by the Deputy Returning Officers hereinafter mentioned, on Monday, the seventh day of June, 1909, commencing at the hour of nine o'clock in the morning and continuing until five o'clock in the afternoon, at the undermentioned places, being the polling places fixed for portions of the several wards in the said City:

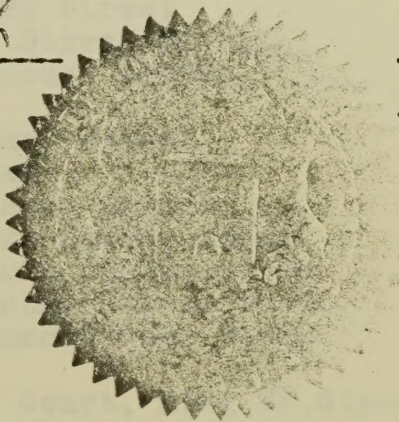
That on Thursday, the third day of June, 1909, at eleven o'clock in the forenoon, the Mayor shall attend at the Council Chamber in the City Hall to appoint persons to attend at the various polling places and at the final summing up of the votes by the City Clerk respectively, on behalf of the persons interested in and desirous of promoting or opposing the passing of this by-law respectively.

5. That the Clerk of the Council shall attend at his office in the City Hall at the hour of eleven o'clock in the forenoon, on Wednesday, the 9th day of June, 1909, to sum up the number of votes given for or against this by-law.

Passed this 14th day of June, 1909.

St. Kueh

City Clerk.



John W. Lacey

Mayor.

CERTIFIED A TRUE COPY.

Ed. Simpson
CITY CLERK

May 17, 1901

Ward Div.		Place	Deputy Returning Officer.	GOVERNMENT DOCUMENTS
1	1	588 Main Street East	John H. Land	
1	2	666 King Street East	C. V. Langs	
1	3	77 Emerald Street South	Robert Rodgers	
1	4	Stinson Street School	J. P. Dougherty	
1	5	222 Main Street East	Walter Cann	
1	6	151 Ferguson Avenue South	W. P. Smith	
2	1	156 Jackson Street East	Wm. Allan	
2	2	175 John Street South	Thos. Meade	
2	3	89 John Street South	W. H. Wilson	
2	4	31 Main Street East	James Omand	
2	5	109 James Street South	E. G. Payne	
2	6	75 Park Street South	C. H. Bampfylde	
2	7	100 Charlton Avenue West	John Malloy	
3	1	117 Hunter Street West	A. P. Nichol	
3	2	137 Charlton Avenue West	M. A. Pennington	
3	3	337 Main Street West	F. L. Hooper	
3	4	88 Pearl Street South	A. C. Best	
3	5	210 Queen Street South	Wm. Stewart	
3	6	327 Queen Street South	Wm. McLennan	
3	7	356 Main Street West	H. Marsh	
3	8	120 Locke Street South	John Peart	
3	9	321 Charlton Avenue West	Richard Jose	
4	1	135 York Street	Frank Robbins	
4	2	94 Caroline Street North	James Jardine	
4	3	257 Bay Street North	James Kennedy	
4	4	320 King Street West	Geo. Turner	
4	5	110 Pearl Street North	John Bickell	
4	6	246 York Street	John T. Hancock	
4	7	444 York Street	R. P. Leask	
4	8	Sophia Street School	Peter McCullough, Jr.	
4	9	165 Dundurn Street	William F. Tribute	
5	1	49 Market Street	A. L. Richardson	
5	2	City Hall	Byron Richardson	
5	3	18 Rebecca Street	H. E. Thornhill	
5	4	119 Park Street North	Guy Judd	
5	5	363 James Street North	Headley V. Walsh	
5	6	389 Macnab Street North	John Gillespie	
5	7	444 James Street North	Wm. C. Smith	
6	1	Police Court, King Wm. Street	Allan Land	
6	2	11 Walnut Street North	T. J. Baine	
6	3	113 Rebecca Street	H. Stevenson	
6	4	201 Cannon Street East	R. J. Wallington	
6	5	208 Mary Street	W. T. McLaren	
6	6	39 Barton Street East	G. A. Buckingham	
6	7	369 Mary Street	John Phillips	
6	8	112 Ferrie Street East	Charles J. Kerr	
6	9	526 John Street North	W. G. Potter	
7	1	98 West Avenue North	Wm. Stewart	
7	2	86 East Avenue North	Frank C. McIlroy	
7	3	28 Tisdale Street	J. H. Coon	
7	4	1 Nightingale Street	F. C. Robins	
7	5	10 Sanford Avenue North	R. W. Randall	
7	6	201 West Avenue North	Frank S. Wood	
7	7	316 Barton Street East	R. C. Ripley	
7	8	362 Barton Street East	Matthew Lowrey	
7	9	304 East Avenue North	W. A. Dodson	
7	10	381 Barton Street East	J. R. Jackson	
7	11	28 Albert Road	W. J. Carlile	
7	12	578 Barton Street East	John B. Freed	
7	13	628 Barton Street East	John A. Hull	
7	14	Corner Lottridge & Barton Sts.	Harry Stipe	

The Corporation of the City of Hamilton

BY-LAW NO. 80- 047

To:

VARY THE COMPOSITION OF THE COUNCIL OF
THE AREA MUNICIPALITY OF THE CITY OF HAMILTON

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MAY 07 1981

GOVERNMENT DOCUMENTS

WHEREAS clauses (c), (d) and (e) of subsection (3a) of section 3 of The Regional Municipality of Hamilton-Wentworth Act, 1973, S.O. 1973, Chapter 74, as enacted by subsection 1 of section 84 of The Regional Municipalities Amendment Act, 1976, S.O. 1976, Chapter 43, provide that the composition of the council of the City of Hamilton may be varied to reduce the total representation of the City of Hamilton on the Regional Council to not less than the minimum of 17 members, as follows:

3. (3a) Upon the application of an area municipality authorized by a by-law of the council thereof, or upon the petition of electors in accordance with the provisions of section 13 of The Municipal Act, the Municipal Board may, by order,

- (c) vary the composition of the council of the area municipality,

provided that,

- (d) no order made under this section shall alter the total number of members who represent the area municipality of the Regional Council as provided for in this Act; and
- (e) the mayor of the area municipality shall continue to be elected by a general vote of the electors of the area municipality, and shall be the head of the council of the area municipality, and shall be a member of the Regional Council, as provided for in this Act;

AND WHEREAS it is intended to vary the composition of the council of the City of Hamilton from 21 members to a minimum of 17 members.

NOW THEREFORE the Council of the Corporation of the City of Hamilton enacts as follows:

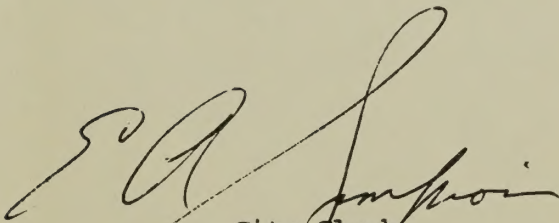
1. An application is hereby authorized varying the composition of this council from 21 members to a minimum of 17 members, as follows:

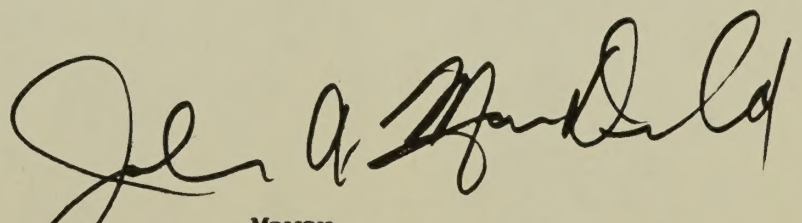
1. A mayor elected in accordance with subsection 1 of section 3 of The Regional Municipality of Hamilton-Wentworth Act, 1973.
2. Sixteen members who are aldermen elected by wards in accordance with paragraph 1 of subsection 1 of section 3 of the said Act.

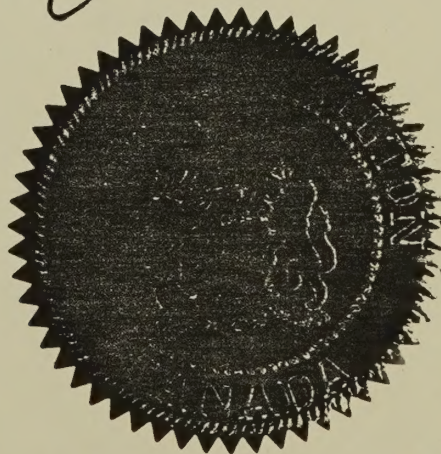
2. This council shall be composed of only 17 members on and after December 1, 1980.

Received first reading on the 12th day of February, A.D., 1980.

Received second and third reading and finally passed on the 26th day of February, A.D., 1980.

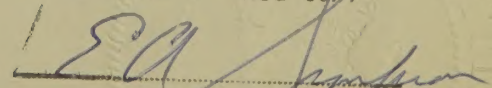

City Clerk


Mayor



(1980) 1 R.L.F.C. 9, 10, 11,
12, 13, 14, January 29

CERTIFIED A TRUE COPY


CITY CLERK

ONTARIO MUNICIPAL BOARD

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MAY 07 1981
GOVERNMENT DOCUMENTS

IN THE MATTER of Section 3(3a) of the Regional
Municipality of Hamilton-Wentworth, Act, 1973
(S.O. 1973, c. 74)

and

SECTION 84(1) of the Regional Municipalities Amendment
Act, 1976 (S.O. 1976, c. 43)

and

IN THE MATTER OF an application by the Corporation
of the City of Hamilton to reduce the number of members
of the City Council from 21 to 17 inclusive of a
Mayor and 16 Aldermen, by abolishing the Board of Control
in accordance with By-law 80-047, passed on the
26th day of February, 1980.

---This is a hearing of the Ontario Municipal Board, held at
the Council Chambers, City Hall, Hamilton, Ontario on the 25th
day of June, 1980.

A P P E A R A N C E S:

BOARD:

W.H.J. Thompson, Esq.,

Chairman

D. M. Rogers, Esq.,

Member

COUNSEL:

P. M. Eker, Esq.,

for the City of Hamilton

S. E. Hinkson,

HINKSON REPORTING SERVICES,

2405 Sinclair Circle,

Burlington, Ontario,

L7P 3C2

THE CHAIRMAN: Please be seated.

5 The Hearing before the Ontario Municipal Board is
an application by the Corporation of the City of Hamilton for
approval of a By-law which in effect abolishes the four member
Board of Control and the existing council structure. The
10 present council of the Municipality consist of a Mayor and four
councillors all of which persons are elected to those positions
by a municipal-wide vote. The City divided into eight wards,
two aldermen are elected to each of the wards by electors
residing within the respective wards.

15 The Board of Control has been in existence in the
Municipality since about the year 1909 and evidence adduced
indicated that the Board came into being as a result of a
referendum held in the City of Hamilton.

20 The support staff for the Board of Control is
part of the City Clerk's department and consist of several
persons.

25 If the subject application is approved, the
result will be that an existing 21-member municipal council
will be reduced to a 17-member municipal council, composed of a
Mayor and 16 aldermen. Two representing each of the eight
wards in the city.

30 The duties that the Board of Control now
exercises will be assumed in that event by the councillors,

presumably by the forming of committees and sub-committees.

5 It is proposed, should this application be successful, that a Chief Administrative Officer be appointed for the corporation, and that that person, together with the various committees of council, will then substitute for the present framework municipal government in the City.

10 This type of government that already exist in the region of which the city is part.

15 26 witnesses appeared before the Board in this matter; exactly, one-half being members of the present council. The Board indicated at the commencement of the hearing that evidence would not be entertained by the Board relating to events leading up to the enactment of subject By-law.

20 However, in the Board's opinion, members of council can give real, relevant, evidence relating to the matter by virtue of their experience as municipal representatives and in some cases, as regional representatives.

25 That type of evidence was admitted and the Board finds it useful in arriving at a decision in this matter.

30 Several grounds were put forth by various witnesses in support of the City's application. Several witnesses stated that if subject By-law were approved then, a system which would be more efficient would come into place,

that system being what's referred to as the Chief Administrative Officer Committee form of government. As with various grounds for or against Board approval in this matter, contradictory evidence was also adduced, and that was the case in regard to this efficiency suggested.

Evidence was adduced by a number of witnesses, depending upon experience, some up to 19/20 years as councillors and several years as regional councillors, that the Chief Administrative Officer Committee system was more efficient than the existing municipal structure local government, and these witness would be in a good position to know having served for a number of years in both categories of council, and will therefore be in a position to judge both forms of local government.

Another reason for abolishment of the Board of Control was that with the advent of regional government, the responsibilities and duties of the Board have been much reduced, and the need for the Board's existence, therefore, less necessary heretofore.

Examples were given of former responsibilities of the municipality which was transferred to the region, such as sewer and water, construction below the streets, garbage disposal, administration of streets, parks, transit matters, all engineering decisions.

5 Several witnesses testified that the Board of Control has less responsibility than before the introduction of regional government. Then again, there were other reasons for Board approval.

10 Evidence to the contrary was given, within the Board's opinion, logic will surely demand, that with the transfer of those responsibilities already referred to, that the scope of the Board's work must necessarily have been reduced, there being no evidence, no additional responsibilities to replace those losses.

15 Secondly, the Board was informed that at one time the Board of Control administered budget reviews, financial responsibilities; but that at sometime in the past, the suggestion of the Board of Control that duty was now transferred to a Joint Task Force, the controller and council members.

20 One reason for retaining the Board of Control is advanced that the Board of Control introduce a zero budget financing a system most appropriate in this day and age of what may be deemed in some circles, as excessive government expenditures, which method has been adopted by other municipalities elsewhere. The introduction of this type of budgeting by itself, is not necessarily a reason for retention of this system if the bodies that follow, (should the application be approved), follow the same method.

5 Some witnesses stated that the Board was not as effective as it has been in the past. Then again, there was other evidence to the contrary to the statement.

10 Some witnesses stated that with the proposed Chief Administrative Officer Committee system, there would be less controversy than some persons alleged occur, at this time, between members of council and the Board of Control.

15 Then again, it was stated, that by virtue of City Council being in a position to overrule the decisions of the Board of Control by means of the 2/3 vote, that this rendered the Board of Control less effective, because the council had the last result, its power to overrule the decision of the Board of Control.

20 The Mayor of the municipality testified that during this period this 2/3 vote procedure had never occurred but it is there in the background.

25 One witness testified that it would be better if the Region and the City has the same form of municipal structure.

30 Only one witness testified as to that ground for the Board's approval and the Board could recall no evidence of any person who disputed that statement.

The Board has already averted to the Joint Task Force of council regarding review of budget.

This system has, apparently, replaced the former Board of Control budget review.

5 One witness who is a member of a committee of council, dealing with budget review is also a member of the regional budget committee, or finance committee, and it was this person's opinion that that system was adequate. In this case, this is another function which was not removed by regional government but was altered by the municipal activity itself.

10 Several witnesses stated that if municipal councillors were also regional councillors, it would better serve the system. Several witnesses testified that on that proposition, and one witness testified to the contrary. The latter witness was the newest member of council and did not have the years of experience that the witnesses which supported that ground for abolition. Which witnesses, in addition to many years of experience on municipal council, also serve for several years on the regional council and therefore, were in a position to judge from their own experience as to whether or not being a regional councillor assisted them in attending to their own ward constituents. Although it is apparent from the position that various witnesses took, as to whether they felt there was a need now for the Board of Control, obviously persons that testified in favour of the City's application,

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obviously must be of the opinion that there is no need.

Whereas, those who testified in opposition must be of the opinion that there is need for a Board of Control.

Notwithstanding that, there were several witness who specifically stated that now, certainly since the advent of regional government, there is no need for a Board of Control in the City of Hamilton.

Now as to the grounds put forward in an attempt to seek the Board's non-approval of this application, one ground was to the effect that it is necessary to retain the Board of Control because the Board of Control is elected on a citywide basis, whereas the councillors are elected by ward. Therefore, persons elected on the citywide basis are in a better position to make policy decisions on matters affecting the City, generally.

And secondly, are not subject to the pressures of which ward Aldermen are subject.

While that is a very practical proposition, and no doubt very pertinent, but the Board can recall no evidence from most of the witnesses that they are subject to any such ward pressure, and the Board can recall no evidence that if there were pressure that it would affect their decisions.

Another ground advanced for retaining the Board of Control was a proposition put forward by private citizens in

a brief that if the application before the Board is approved, there would be a heavier workload based upon councillors of the City, and that either they will not be able to, within the time constraint, complete all these duties, or if they do, the proper scrutiny will not take place, and in an endeavour to complete the heavier workload. That was the position put forward by a private citizen.

The Board can recall no evidence from all the elected representatives who testified here as to that being the ground for retaining the Board of Control. So the Board can only assume that that position is groundless, or if there is to be a heavier workload, that the individuals concerned can handle themselves.

The same private citizen advanced a position that no estimates of the cost of the proposed system has been placed before the Board, and this will be a reason for exercising caution, and probably not approving this application? What little evidence there was along this line, seem to indicate to the Board that if the Board of Control were abolished, that the cost contributed to the Board, at this hearing, would not be a total saving to the municipality because, obviously, there is going to have to be a salary paid to the Chief Administrative Officer and his support staff, and there will be operating expenses of his office.

5 The Board can assume that what the cost of the
new system will be, if the application were approved, cannot be
in such a category as to be prohibitive, or standing by itself,
to be a reason for not approving the application. And in any
event, if this application is approved, and it turns out that
the Board is wrong in that assumption about the cost of the new
10 system, the obvious remedy to return is ten-fold.

15 Another reason advanced for retaining the present
system is that the appointment of a Chief Administrative
Officer would not be a democratic move in that this officer who
no doubt would hold a powerful position within the
municipality, would not be responsible to the electors, and
that he would be an appointed official and not an elected
member of council.

20 Well, I suppose the answer to that is, this is
not the first time that there has been such an official of such
a system of municipal government.

25 Secondly, the Chief Administrative Officer only
has those powers, once they are delegated to him by the elected
representatives of the City. In the normal course, the duties
would be outlined. There would be supervision of his conduct,
and his exercising of his duties by the elected members of the
City Council, and in the event that for good reason he should
be discharged, the City Council will have that power, and that
30 could be done at any time.

On the other hand, if the present system is retained, and if for some reason or the other there was a Board of Control, their conduct is such that they could not hold the position; they'll have to wait till the next election occurred, unless such conduct were of such a nature that judicial proceedings could be executed. And, of course, that itself takes time. So with the proposed system any diversions from proper authority of local authority could be exercised with greater haste than under the existing system.

Now, those, basically, are the main grounds that were put forward for approval of this By-law, for dismissal of the application, and as the Board has indicated, many of these positions were contradicted by other witnesses.

The only opinion witness, Mr. Eric Hardy, the Management Consultant who specialize in municipal matters, and a witness who has appeared before this Board many times, on many important applications, and mainly important applications as the subject one is, was retained a short time before this hearing commenced, and whose research apparently consisted mainly of interviewing several members of council, appeared in opposition to the Board's approval, and his evidence was that at this time he was concerned with the type of change proposed.

Now, the Board will have something to say about the timing matter, shortly.

Mr. Hardy was of the opinion that the Board of Control represented nominal strength and should be preserved; he thought that the disappearance of council, that persons elected by general vote, is not in the best interest of the City. His conclusion was based, primarily, as he replied to cross-examination, to his experience in the field.

When Mr. Hardy was asked what he thought of the various grounds in support of this application put forward by a witness, his answer was that he did not have the experience that that witness has so he could not comment on his evidence.

Now that, to the Board, seemed to be the whole crux of the matter when dealing with the evidence of Mr. Hardy where it conflicts with witnesses who have had many years of experience, not only in the municipal field, but on the regional council since its inception.

The Board, thus, has no other choice than to accept those who have had practical experience as opposed to theory.

Now what about the citizens? Notwithstanding that this hearing was, at the direction of the Board, advertised twice in the local paper, having circulation in the municipality; notwithstanding that there must have been obviously, great exposure in this matter, in the activities of council and various committees leading to the enactment of such

5 a By-law, the grand total of nine citizens appeared. The Board was advised that in the 1978 municipal elections there were over 216,000 persons entitled to vote in municipal matters.

10 Now, three citizens appeared to support the application. Two citizens appeared to oppose and four citizens were here to request a plebiscite or a referendum. There were two citizens out of 216,000 odd persons, who appeared before this Board to request that the Board of Control be continued.

15 Now, as to timing, Mr. Hardy and several other persons suggested to the Board that the application should not be approved at this time. Evidence was adduced that there were some uncertainty as to the permanence of the existing municipal structure of the region; that there was possibility that the existing two-tier form of government might result in a single tier, and until this was resolved, the matter before the Board
20 should not be determined. If the application is approved then there would be a Chief Administrative Officer appointed. There already is such an official in the Region. If one day the two-tier become one-tier form of government, we are going to
25 have a C.A.O., but there was no evidence before the Board that there is any certainty, first of all, that there is going to be change in the form of regional government, and secondly, if it's being contemplated, when its going to occur. If there is
30 a change, it may not occur for years.

Apparently, there was a commission which had been referred to as the Stewart Commission, during this hearing, which recommended a single-tier government, but that report of the commission was not adopted by the legislature which has the constitutional jurisdiction to require a restructure of the municipal government, so the Board can only conclude that at this time, there is no real evidence that there is going to be a change, and if so, it is going to happen in the immediate future; to a certain extent, that the Board's decision herein, should not be made at this time, on the basis of the timing objection.

Now, as to the request for a referendum. It was stated to this Board that because the Board of Control came into being as a result of referendum, that only a referendum could be the vehicle by which it could be abolished. The Board is of the opinion that that is not necessary.

The matter before the Board is the By-law of the council of the City of Hamilton and that By-law was enacted pursuant to legislative authority granted to the City and to -- well, to the City, and to other municipalities supposed to be associated with the City of Hamilton council. There is no requirement that that authority shall not be exercised to abolish the structure of government on component, but a structure of government which was set-up as a result of a

referendum.

5 City Council in its wisdom deed it desirable to
set-up a referendum or plebescite before the act. It could
have done so and it choose not to. The matter is legally
before this Board, and the council has done nothing improperly
in that respect. The Board has already, in its decision made
10 reference to the apparent lack of public interest in this
matter. The Board sees no useful purpose in accedeing to the
request of those who seek a referendum, because for whatever
reason, the public is just not interested enough to be here.

15 Now as to general principles upon which the Board
makes a decision on matters such as this, the Board's
longstanding principle in regard to matters wherein an elected
council is acting, is that unless the Board is clearly
satisfied that a wrong decision has been made, appointed
20 members of this Board will not overrule the decisions made by
elected officials.

25 Now, of course, what follows from that is that
this type of hearing is not the second bite of the apple, or
another go around of the matter. It means that the Board,
because legislation requires approval of this Board to a
council's action, must hold a hearing, and in accordance with
the Board's stated princple the Board hears evidence from those
30 interested enough to appear before it, either in support or in

5 opposition towards a particular matter, and after hearing that evidence, it makes a decision in accordance with the principle before stated.

10 I suppose the bottom line would be that even if the Board were satisfied on the evidence, that there is nothing wrong with the existing system, in the City of Hamilton, should it overrule the decision of an elected body to do what they are legally entitled to do? Well, if the Board follows its principle enunciated earlier, how can it overrule that decision? And that's the bottom line.

15 The subject, after reviewing all the evidence, the Board is satisfied that it does not have to retreat, so-to-speak, to that last position. The Board is satisfied, on the evidence as a whole, that what is proposed by virtue of this By-law, does not constitute a council acting in a way
20 other than the best interest of the citizens.

25 There is no evidence before the Board that the council made a bad decision, or a decision that this Board is to overrule. The result, of course, is that application will be approved.

30 However, before the Board order herein issues, the Board will have to be satisfied by the applicant that the provisions in Section 3, Sub-section (3a), Clause (d), of the Regional Municipality of Hamilton-Wentworth Act, 1973 as

5 amended, has not been violated, or provision has been made for an exception. Now, that provision states that on certain application, as the subject application, 'no order of the Board shall be made to alter the total number of members representing area municipality on the regional council'.

10 Now, the Regional Municipality Act which sets up the composition of council, Section 8, Sub-section 1, Clause (b), referring to Hamilton, states that: 'The Board of Control and 12 members of Council from the City of Hamilton elected by such council shall be members of the area council', the
15 regional council. That doesn't say Hamilton shall have 16 members in council. It says, it shall have a Board of Control and 12. So if the subject application is approved, and there is no Board of Control, at the end of the present term of
20 council, then there are only 12 members of council. The Board of Control is not there so there is going to be four members that are not on council. So in that respect, the total number of members will be altered. So the decision has been made
25 regarding the application, but the Board's Order will not issue because the legislature of this province has directed that no Order shall issue, if, the total number of members who represent the area municipality in the regional council is altered.

30 Now just one other point. Normally, the Board makes no reference to counsel, and that is the C-O-U-N-S-E-L,

5 in the hearing before it. But on very rare occasions, and this is one of them, the Board feels it necessary to make some comment.

10 This is an Application by the council of the City. It is not an application by some members of council, who support the matter before the Board. This is a By-law of the City.

15 Now, Mr. Eker, as part of his duties and responsibilities as a member of the legal staff of the City, was delegated to present the City's case before the Board. The Board well appreciates the unenviable position that puts this solicitor in, in view of the fact that the By-law before the Board does not have the approval of almost half the members of the council and it must be understood that Mr. Eker was just
20 performing his duty as a member of the bar and as such respecting the oath that he has taken as a member of the legal profession and that it is not to be taken personally. I compliment Mr. Eker on his unenviable task that he has performed, as a member of the staff of the City of Hamilton and
25 as such carried out his duty in the most efficient way possible. As I said, he was only doing his duty as an employee of the City concerned and a member of the bar.

30 This hearing is adjourned.

I hereby certify the foregoing to be
a true and accurate transcript of the
above hearing, to the best of my skill and ability:

S. E. Hinkson

Certified correct,

S. E. Hinkson,

Verbatim Reporter

ONTARIO MUNICIPAL BOARD

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GOVERNMENT DOCUMENTS

IN THE MATTER of Section 3(3a) of the Regional
Municipality of Hamilton-Wentworth, Act, 1973
(S.O. 1973, c. 74)

and

SECTION 84(1) of the Regional Municipalities Amendment
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in accordance with By-law 80-047, passed on the
26th day of February, 1980.

HIMPSON REPORTING SERVICES,
2405 SINCLAIR CIRCLE,
BURLINGTON, ONTARIO,
L7P 3C2

---This is a hearing of the Ontario Municipal Board, held at the Council Chambers, City Hall, Hamilton, Ontario on the 25th day of June, 1980.

A P P E A R A N C E S:

BOARD:

W.H.J. Thompson, Esq.,

Chairman

D. M. Rogers, Esq.,

Member

COUNSEL:

P. M. Eker, Esq.,

for the City of Hamilton

S. E. Hinkson,
HINKSON REPORTING SERVICES,
2405 Sinclair Circle,
Burlington, Ontario,

L7P 3C2

THE CHAIRMAN: Please be seated.

5 The Hearing before the Ontario Municipal Board is
an application by the Corporation of the City of Hamilton for
approval of a By-law which in effect abolishes the four member
Board of Control and the existing council structure. The
10 present council of the Municipality consist of a Mayor and four
councillors all of which persons are elected to those positions
by a municipal-wide vote. The City divided into eight wards,
two aldermen are elected to each of the wards by electors
residing within the respective wards.

15 The Board of Control has been in existence in the
Municipality since about the year 1909 and evidence adduced
indicated that the Board came into being as a result of a
referendum held in the City of Hamilton.

20 The support staff for the Board of Control is
part of the City Clerk's department and consist of several
persons.

25 If the subject application is approved, the
result will be that an existing 21-member municipal council
will be reduced to a 17-member municipal council, composed of a
Mayor and 16 aldermen. Two representing each of the eight
wards in the city.

30 The duties that the Board of Control now
exercises will be assumed in that event by the councillors,

presumably by the forming of committees and sub-committees.

5 It is proposed, should this application be successful, that a Chief Administrative Officer be appointed for the corporation, and that that person, together with the various committees of council, will then substitute for the present framework municipal government in the City.

10 This type of government that already exist in the region of which the city is part.

15 26 witnesses appeared before the Board in this matter; exactly, one-half being members of the present council. The Board indicated at the commencement of the hearing that evidence would not be entertained by the Board relating to events leading up to the enactment of subject By-law.

20 However, in the Board's opinion, members of council can give real, relevant, evidence relating to the matter by virtue of their experience as municipal representatives and in some cases, as regional representatives.

25 That type of evidence was admitted and the Board finds it useful in arriving at a decision in this matter.

30 Several grounds were put forth by various witnesses in support of the City's application. Several witnesses stated that if subject By-law were approved then, a system which would be more efficient would come into place,

that system being what's referred to as the Chief Administrative Officer Committee form of government. As with various grounds for or against Board approval in this matter, contradictory evidence was also adduced, and that was the case in regard to this efficiency suggested.

Evidence was adduced by a number of witnesses, depending upon experience, some up to 19/20 years as councillors and several years as regional councillors, that the Chief Administrative Officer Committee system was more efficient than the existing municipal structure local government, and these witness would be in a good position to know having served for a number of years in both categories of council, and will therefore be in a position to judge both forms of local government.

Another reason for abolishment of the Board of Control was that with the advent of regional government, the responsibilities and duties of the Board have been much reduced, and the need for the Board's existence, therefore, less necessary heretofore.

Examples were given of former responsibilities of the municipality which was transferred to the region, such as sewer and water, construction below the streets, garbage disposal, administration of streets, parks, transit matters, all engineering decisions.

5 Several witnesses testified that the Board of Control has less responsibility than before the introduction of regional government. Then again, there were other reasons for Board approval.

10 Evidence to the contrary was given, within the Board's opinion, logic will surely demand, that with the transfer of those responsibilities already referred to, that the scope of the Board's work must necessarily have been reduced, there being no evidence, no additional responsibilities to replace those losses.

15 Secondly, the Board was informed that at one time the Board of Control administered budget reviews, financial responsibilities; but that at sometime in the past, the suggestion of the Board of Control that duty was now transferred to a Joint Task Force, the controller and council members.

20 One reason for retaining the Board of Control is advanced that the Board of Control introduce a zero budget financing a system most appropriate in this day and age of what
25 may be deemed in some circles, as excessive government expenditures, which method has been adopted by other municipalities elsewhere. The introduction of this type of budgeting by itself, is not necessarily a reason for retention
30 of this system if the bodies that follow, (should the application be approved), follow the same method.

5 Some witnesses stated that the Board was not as effective as it has been in the past. Then again, there was other evidence to the contrary to the statement.

10 Some witnesses stated that with the proposed Chief Administrative Officer Committee system, there would be less controversy than some persons alleged occur, at this time, between members of council and the Board of Control.

15 Then again, it was stated, that by virtue of City Council being in a position to overrule the decisions of the Board of Control by means of the 2/3 vote, that this rendered the Board of Control less effective, because the council had the last result, its power to overrule the decision of the Board of Control.

20 The Mayor of the municipality testified that during this period this 2/3 vote procedure had never occurred but it is there in the background.

25 One witness testified that it would be better if the Region and the City has the same form of municipal structure.

30 Only one witness testified as to that ground for the Board's approval and the Board could recall no evidence of any person who disputed that statement.

The Board has already averted to the Joint Task Force of council regarding review of budget.

This system has, apparently, replaced the former Board of Control budget review.

5 One witness who is a member of a committee of council, dealing with budget review is also a member of the regional budget committee, or finance committee, and it was this person's opinion that that system was adequate. In this case, this is another function which was not removed by regional government but was altered by the municipal activity itself.

10 Several witnesses stated that if municipal councillors were also regional councillors, it would better serve the system. Several witnesses testified that on that proposition, and one witness testified to the contrary. The latter witness was the newest member of council and did not have the years of experience that the witnesses which supported that ground for abolition. Which witnesses, in addition to many years of experience on municipal council, also serve for several years on the regional council and therefore, were in a position to judge from their own experience as to whether or not being a regional councillor assisted them in attending to their own ward constituents. Although it is apparent from the position that various witnesses took, as to whether they felt there was a need now for the Board of Control, obviously persons that testified in favour of the City's application,

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obviously must be of the opinion that there is no need.
Whereas, those who testified in opposition must be of the
5 opinion that there is need for a Board of Control.

Notwithstanding that, there were several witness
who specifically stated that now, certainly since the advent of
regional government, there is no need for a Board of Control in
10 the City of Hamilton.

Now as to the grounds put forward in an attempt
to seek the Board's non-approval of this application, one
ground was to the effect that it is necessary to retain the
Board of Control because the Board of Control is elected on a
15 citywide basis, whereas the councillors are elected by ward.
Therefore, persons elected on the citywide basis are in a
better position to make policy decisions on matters affecting
the City, generally.

20 And secondly, are not subject to the pressures of
which ward Aldermen are subject.

While that is a very practical proposition, and
no doubt very pertinent, but the Board can recall no evidence
25 from most of the witnesses that they are subject to any such
ward pressure, and the Board can recall no evidence that if
there were pressure that it would affect their decisions.

Another ground advanced for retaining the Board
30 of Control was a proposition put forward by private citizens in

a brief that if the application before the Board is approved, there would be a heavier workload based upon councillors of the City, and that either they will not be able to, within the time constraint, complete all these duties, or if they do, the proper scrutiny will not take place, and in an endeavour to complete the heavier workload. That was the position put forward by a private citizen.

The Board can recall no evidence from all the elected representatives who testified here as to that being the ground for retaining the Board of Control. So the Board can only assume that that position is groundless, or if there is to be a heavier workload, that the individuals concerned can handle themselves.

The same private citizen advanced a position that no estimates of the cost of the proposed system has been placed before the Board, and this will be a reason for exercising caution, and probably not approving this application? What little evidence there was along this line, seem to indicate to the Board that if the Board of Control were abolished, that the cost contributed to the Board, at this hearing, would not be a total saving to the municipality because, obviously, there is going to have to be a salary paid to the Chief Administrative Officer and his support staff, and there will be operating expenses of his office.

5 The Board can assume that what the cost of the
new system will be, if the application were approved, cannot be
in such a category as to be prohibitive, or standing by itself,
to be a reason for not approving the application. And in any
event, if this application is approved, and it turns out that
the Board is wrong in that assumption about the cost of the new
10 system, the obvious remedy to return is ten-fold.

15 Another reason advanced for retaining the present
system is that the appointment of a Chief Administrative
Officer would not be a democratic move in that this officer who
no doubt would hold a powerful position within the
municipality, would not be responsible to the electors, and
that he would be an appointed official and not an elected
member of council.

20 Well, I suppose the answer to that is, this is
not the first time that there has been such an official of such
a system of municipal government.

25 Secondly, the Chief Administrative Officer only
has those powers, once they are delegated to him by the elected
representatives of the City. In the normal course, the duties
would be outlined. There would be supervision of his conduct,
and his exercising of his duties by the elected members of the
City Council, and in the event that for good reason he should
30 be discharged, the City Council will have that power, and that
could be done at any time.

5 On the other hand, if the present system is retained, and if for some reason or the other there was a Board of Control, their conduct is such that they could not hold the position; they'll have to wait till the next election occurred, unless such conduct were of such a nature that judicial proceedings could be executed. And, of course, that itself takes time. So with the proposed system any diversions from proper authority of local authority could be exercised with greater haste than under the existing system.

10 Now, those, basically, are the main grounds that were put forward for approval of this By-law, for dismissal of the application, and as the Board has indicated, many of these positions were contradicted by other witnesses.

15 The only opinion witness, Mr. Eric Hardy, the Management Consultant who specialize in municipal matters, and a witness who has appeared before this Board many times, on many important applications, and mainly important applications as the subject one is, was retained a short time before this hearing commenced, and whose research apparently consisted mainly of interviewing several members of council, appeared in opposition to the Board's approval, and his evidence was that at this time he was concerned with the type of change proposed.

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30 Now, the Board will have something to say about the timing matter, shortly.

Mr. Hardy was of the opinion that the Board of Control represented nominal strength and should be preserved; he thought that the disappearance of council, that persons elected by general vote, is not in the best interest of the City. His conclusion was based, primarily, as he replied to cross-examination, to his experience in the field.

When Mr. Hardy was asked what he thought of the various grounds in support of this application put forward by a witness, his answer was that he did not have the experience that that witness has so he could not comment on his evidence.

Now that, to the Board, seemed to be the whole crux of the matter when dealing with the evidence of Mr. Hardy where it conflicts with witnesses who have had many years of experience, not only in the municipal field, but on the regional council since its inception.

The Board, thus, has no other choice than to accept those who have had practical experience as opposed to theory.

Now what about the citizens? Notwithstanding that this hearing was, at the direction of the Board, advertised twice in the local paper, having circulation in the municipality; notwithstanding that there must have been obviously, great exposure in this matter, in the activities of council and various committees leading to the enactment of such

5 a By-law, the grand total of nine citizens appeared. The Board was advised that in the 1978 municipal elections there were over 216,000 persons entitled to vote in municipal matters.

10 Now, three citizens appeared to support the application. Two citizens appeared to oppose and four citizens were here to request a plebiscite or a referendum. There were two citizens out of 216,000 odd persons, who appeared before this Board to request that the Board of Control be continued.

15 Now, as to timing, Mr. Hardy and several other persons suggested to the Board that the application should not be approved at this time. Evidence was adduced that there were some uncertainty as to the permanence of the existing municipal structure of the region; that there was possibility that the existing two-tier form of government might result in a single tier, and until this was resolved, the matter before the Board should not be determined. If the application is approved then there would be a Chief Administrative Officer appointed. There already is such an official in the Region. If one day the two-tier become one-tier form of government, we are going to have a C.A.O., but there was no evidence before the Board that there is any certainty, first of all, that there is going to be change in the form of regional government, and secondly, if it's being contemplated, when its going to occur. If there is a change, it may not occur for years.

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Apparently, there was a commission which had been referred to as the Stewart Commission, during this hearing, which recommended a single-tier government, but that report of the commission was not adopted by the legislature which has the constitutional jurisdiction to require a restructure of the municipal government, so the Board can only conclude that at this time, there is no real evidence that there is going to be a change, and if so, it is going to happen in the immediate future; to a certain extent, that the Board's decision herein, should not be made at this time, on the basis of the timing objection.

Now, as to the request for a referendum. It was stated to this Board that because the Board of Control came into being as a result of referendum, that only a referendum could be the vehicle by which it could be abolished. The Board is of the opinion that that is not necessary.

The matter before the Board is the By-law of the council of the City of Hamilton and that By-law was enacted pursuant to legislative authority granted to the City and to -- well, to the City, and to other municipalities supposed to be associated with the City of Hamilton council. There is no requirement that that authority shall not be exercised to abolish the structure of government on component, but a structure of government which was set-up as a result of a

referendum.

5 City Council in its wisdom deed it desirable to
set-up a referendum or plebescite before the act. It could
have done so and it choose not to. The matter is legally
before this Board, and the council has done nothing improperly
in that respect. The Board has already, in its decision made
10 reference to the apparent lack of public interest in this
matter. The Board sees no useful purpose in accedeing to the
request of those who seek a referendum, because for whatever
reason, the public is just not interested enough to be here.

15 Now as to general principles upon which the Board
makes a decision on matters such as this, the Board's
longstanding principle in regard to matters wherein an elected
council is acting, is that unless the Board is clearly
satisfied that a wrong decision has been made, appointed
20 members of this Board will not overrule the decisions made by
elected officials.

25 Now, of course, what follows from that is that
this type of hearing is not the second bite of the apple, or
another go around of the matter. It means that the Board,
because legislation requires approval of this Board to a
council's action, must hold a hearing, and in accordance with
the Board's stated princple the Board hears evidence from those
30 interested enough to appear before it, either in support or in

5 opposition towards a particular matter, and after hearing that evidence, it makes a decision in accordance with the principle before stated.

10 I suppose the bottom line would be that even if the Board were satisfied on the evidence, that there is nothing wrong with the existing system, in the City of Hamilton, should it overrule the decision of an elected body to do what they are legally entitled to do? Well, if the Board follows its principle enunciated earlier, how can it overrule that decision? And that's the bottom line.

15 The subject, after reviewing all the evidence, the Board is satisfied that it does not have to retreat, so-to-speak, to that last position. The Board is satisfied, on the evidence as a whole, that what is proposed by virtue of this By-law, does not constitute a council acting in a way
20 other than the best interest of the citizens.

25 There is no evidence before the Board that the council made a bad decision, or a decision that this Board is to overrule. The result, of course, is that application will be approved.

30 However, before the Board order herein issues, the Board will have to be satisfied by the applicant that the provisions in Section 3, Sub-section (3a), Clause (d), of the Regional Municipality of Hamilton-Wentworth Act, 1973 as

amended, has not been violated, or provision has been made for an exception. Now, that provision states that on certain application, as the subject application, 'no order of the Board shall be made to alter the total number of members representing area municipality on the regional council'.

Now, the Regional Municipality Act which sets up the composition of council, Section 8, Sub-section 1, Clause (b), referring to Hamilton, states that: 'The Board of Control and 12 members of Council from the City of Hamilton elected by such council shall be members of the area council', the regional council. That doesn't say Hamilton shall have 16 members in council. It says, it shall have a Board of Control and 12. So if the subject application is approved, and there is no Board of Control, at the end of the present term of council, then there are only 12 members of council. The Board of Control is not there so there is going to be four members that are not on council. So in that respect, the total number of members will be altered. So the decision has been made regarding the application, but the Board's Order will not issue because the legislature of this province has directed that no Order shall issue, if, the total number of members who represent the area municipality in the regional council is altered.

Now just one other point. Normally, the Board makes no reference to counsel, and that is the C-O-U-N-S-E-L,

5 in the hearing before it. But on very rare occasions, and this is one of them, the Board feels it necessary to make some comment.

10 This is an Application by the council of the City. It is not an application by some members of council, who support the matter before the Board. This is a By-law of the City.

15 Now, Mr. Eker, as part of his duties and responsibilities as a member of the legal staff of the City, was delegated to present the City's case before the Board. The Board well appreciates the unenviable position that puts this solicitor in, in view of the fact that the By-law before the Board does not have the approval of almost half the members of the council and it must be understood that Mr. Eker was just
20 performing his duty as a member of the bar and as such respecting the oath that he has taken as a member of the legal profession and that it is not to be taken personally. I compliment Mr. Eker on his unenviable task that he has
25 performed, as a member of the staff of the City of Hamilton and as such carried out his duty in the most efficient way possible. As I said, he was only doing his duty as an employee of the City concerned and a member of the bar.

30 This hearing is adjourned.

I hereby certify the foregoing to be
a true and accurate transcript of the
above hearing, to the best of my skill and ability:

S. E. Hinkson

Certified correct,

S. E. Hinkson,

Verbatim Reporter



Executive Council

Copy of an Order-in-Council approved by Her Honour the Lieutenant Governor, dated the 3rd day of September, A.D. 1980.

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GOVERNMENT DOCUMENTS

The Committee of Council have had under consideration the report of the Honourable the Minister of Intergovernmental Affairs, wherein he states that,

WHEREAS the City of Hamilton made application to the Ontario Municipal Board for a variation in the Composition of its Council from twenty-one (21) members to seventeen (17) members;

AND WHEREAS the application came on for hearing before the Ontario Municipal Board and an Order was issued, M 80169 dated the 26th day of August, 1980 approving the variation in the composition of Council as aforesaid;

AND WHEREAS the Ontario Municipal Board Order is subject to an authorization by Order of the Lieutenant Governor in Council relating to the representation of the City of Hamilton on the Regional Council of the Regional Municipality of Hamilton-Wentworth;

The Honourable the Minister of Intergovernmental Affairs therefore recommends that pursuant to subsection 3c of section 3 of The Regional Municipality of Hamilton-Wentworth Act, 1973, the representation of the City of Hamilton on the Council of the Regional Municipality of Hamilton-Wentworth consist of the head of council of the City of Hamilton and the sixteen (16) members thereof in accordance with the new composition of the City of Hamilton as established by Ontario Municipal Board Order M 80169 dated the 26th day of August, 1980.

The Committee of Council concur in the recommendation of the Honourable the Minister of Intergovernmental Affairs and advise that the same be acted on.

Certified,

J. E. Langney
Deputy Clerk, Executive Council



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Certified,

A handwritten signature in cursive script, reading "J.E. Langney".

Deputy Clerk, Executive Council

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THE CITY OF HAMILTONHAMILTON PUBLIC LIBRARY
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Ontario

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Certified,

J. E. Langney
Deputy Clerk, Executive Council

GOVERNMENT OF INDIA
MINISTRY OF DEFENCE

1. The Government of India, Ministry of Defence, is pleased to inform you that the following information has been received from the Ministry of Defence, Government of India, regarding the appointment of a new member to the Defence Research and Development Organisation (DRDO).

2. The new member, Mr. [Name], has been appointed as a member of the DRDO, and will be responsible for the following duties:

- (a) To assist the Director, DRDO, in the formulation and implementation of the policy and programme of research and development in the field of defence.
- (b) To assist the Director, DRDO, in the selection and appointment of personnel for the DRDO.
- (c) To assist the Director, DRDO, in the selection and appointment of equipment for the DRDO.
- (d) To assist the Director, DRDO, in the selection and appointment of material for the DRDO.
- (e) To assist the Director, DRDO, in the selection and appointment of personnel for the DRDO.

3. The new member, Mr. [Name], will be appointed as a member of the DRDO, and will be responsible for the following duties:

4. The new member, Mr. [Name], will be appointed as a member of the DRDO, and will be responsible for the following duties:

Yours faithfully,
[Signature]

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LEGAL DEPARTMENT
THE CORPORATION OF
THE CITY OF HAMILTON



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O.C. 2441/80

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Certified,

J. E. Langney
Deputy Clerk, Executive Council



Ontario Municipal Board

IN THE MATTER OF Section 3(3a)
of The Regional Municipality of
Hamilton-Wentworth Act, 1973,
(S.O. 1973, c. 74)

- and -

Section 84(1) of The Regional
Municipalities Amendment Act,
1976 (S.O. 1976, c. 43)

- and -

IN THE MATTER OF an application
by The Corporation of the City
of Hamilton to reduce the number
of members of the City Council
from 21 to 17 inclusive of a
Mayor and 16 Aldermen, by
abolishing the Board of Control,
in accordance with By-law 80-047,
passed on the 26th day of February,
1980

B E F O R E :

B.E. SMITH
Acting-Chairman

- and -

A.H. ARRELL, Q.C.
Vice-Chairman

}
}
} Tuesday, the 26th day of
}
} August, 1980
}
}

THIS APPLICATION having come on for hearing before this Board
from the 23rd to the 26th day of June, 1980, in the City of
Hamilton;

THE BOARD ORDERS that By-law 80-047, passed by Council of The
Corporation of the City of Hamilton on the 26th day of February,
1980, abolishing the Board of Control and varying the composition
of Council from 21 members to 17 members, as follows:

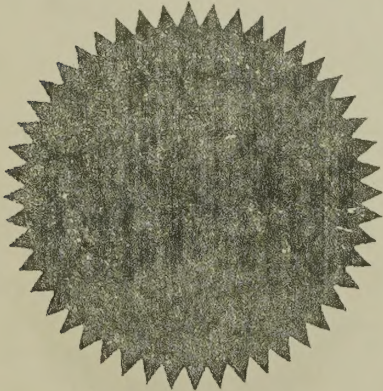
1. A mayor elected in accordance with
subsection 1 of section 3 of The
Regional Municipality of Hamilton-
Wentworth Act, 1973, and
2. Sixteen members who are aldermen
elected by wards in accordance
with paragraph 1 of subsection 1
of section 3 of the said Act

is hereby approved and is effective for the purpose of the municipal election to be held in 1980 and for all other purposes is effective on December 1st, 1980.

AND THE BOARD FURTHER ORDERS that this order is subject to the condition that it is not effective until the issuance of an appropriate order by the Lieutenant Governor-in-Council under subsection (3c) of Section 3 of The Regional Municipality of Hamilton-Wentworth Act, 1973, as amended.

AND THE BOARD FURTHER ORDERS that The Corporation of the City of Hamilton shall pay the costs of reporting these proceedings.

ORDER signed this 26th day of August, 1980.



SECRETARY

ENTERED	
O. B. No.	1480-1
Folio No.	88
AUG 26 1980	
SECRETARY, CITY OF HAMILTON	

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CITY CLERK

is hereby requested and is authorized for the purpose of the
and that action be taken to this end for all other
purpose is authorized on December 1st, 1950.

and the Board further directs that this order be subject to
the condition that it is not effective until the issuance of
an appropriate order by the Assistant Secretary-General
under resolution 1701 of Section 1 of the Federal Mandate
of United Nations, 1971, as amended.

AND THE BOARD further directs that the Corporation of the City
of London shall pay the costs of reviewing these proceedings.
COUNCIL agreed this 15th day of August, 1950.

[Signature]
SECRETARY



[Faint signature]

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